

NO. 94-6-12769

LOUANN MORRIS, ALAN R. MORRIS,
HENRY CARPENTER, GENETTE
CARPENTER, GLORIA J. ADAMS,
DELORIS JOHNSON, GERALD
JOHNSON, PHYLLIS FOX,
HARRY FOX, LUCY FOX,
CLIFFORD E. ASHTON, FRIEDA
ASHTON, EMMA L. CONTRERAS,
RICHARD STOVER, JACQULYN STOVER
DAVID WILLIS, KAREN WILLIS
EDGAR COKER, PRISCILLA COKER,
CLYDE H. SLATE, ALBERT E. MARESH,
JAMES WAGNER, YVONNE WAGNER
NICK FAYLOR, SUE FAYLOR,
TAMMY BIVENS, EDWARD BIVENS,
ELLA W. BUCEK-STANLEY,
FRED C. JEDLICKA, JANE JEDLICKA,
CARL G. SAYKO, THOMAS E. CLARK,
MARY KUBENA, DIANA G. LOYA,
CHARLES LOYA, ROSALIE B.
LUTRINGER, MICHAEL MARTIN,
MILDRED MARTIN, STEVE REESE,
VALERIE REESE, ANGELINE GAAS,
AND BERNARD GAAS

vs.

FORMOSA PLASTICS CORPORATION,
TEXAS; FORMOSA PLASTICS
CORPORATION, AMERICA; FORMOSA
PLASTICS CORPORATION, U.S.A.
FORMOSA PLASTICS DEVELOPMENT
CORPORATION; NAN YA PLASTICS
CORPORATION, AMERICA; NAN YA
PLASTICS CORPORATION, U.S.A.;
FORMOSA UTILITY VENTURE,
LTD.; FORMOSA HYDROCARBONS
COMPANY, INC.; FORMOSA
CHEMICALS & FIBRE
CORPORATION, AMERICA,
JAY SU, INDIVIDUALLY
AND JACK WU, INDIVIDUALLY

IN THE DISTRICT COURT OF

135th
34TH JUDICIAL DISTRICT

CALHOUN COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

VOL. _____
FILED PAGE _____
AT 4:45 O'CLOCK P. M

JUN 7 1994

PAULEA MARTIN
DISTRICT CLERK, CALHOUN COUNTY TEXAS
BY Anna Coward DEPUTY

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME LOUANN MORRIS, ALAN MORRIS, HENRY H. CARPENTER; GENETTE CARPENTER, GLORIA J. ADAMS, GERALD JOHNSON, DELORIS JOHNSON, PHYLLIS FOX, HARRY FOX, LUCY FOX, CLIFFORD E. ASHTON, FRIEDA J. ASHTON, EMMA L. CONTRERAS, RICHARD DALE STOVER, JACQULYN M. STOVER, DAVID WILLIS, KAREN WILLIS, EDGAR COKER, PRISCILLA COKER, CLYDE H. SLATE, ALBERT E. MARESH, JAMES WAGNER, YVONNE WAGNER, NICK FAYLOR, SUE FAYLOR, ELLA W. BUCEK-STANLEY, FRED C. JEDLICKA, JANE JEDLICKA, EDWARD BIVENS, TAMMY BIVENS, CARL G. SAYKO, THOMAS E. CLARK, MARY KUBENA, DIANA G. LOYA, CHARLES LOYA, ROSALIE B. LUTRINGER, MICHAEL MARTIN, MILDREN MARTIN, VALERIE REESE, STEVE REESE, ANGELINE GAAS AND BERNARD GAAS (hereinafter sometimes referred to as "Plaintiffs"), complaining of Formosa Plastics Corporation, Texas; Formosa Plastics Corporation, U.S.A.; Formosa Plastics Corporation, America; Formosa Plastics Development Corporation; Nan Ya Plastics Corporation, America; Nan Ya Plastics Corporation, U.S.A.; Formosa Utility Venture, Ltd.; Formosa Hydrocarbons Company, Inc.; Formosa Chemicals & Fibre Corporation, America; Jay Su, Individually; and Jack Wu, Individually (hereinafter sometimes referred to as "Defendants") and for cause of action would show the Court:

I.

Plaintiffs are residents of the State of Texas. Plaintiffs are homeowners, property owners, business owners, or conduct business by or near Cox Creek, Cox Bay, Upper Lavaca Bay and in close proximity to Defendants' plastic manufacturing storage and transportation facilities.

Plaintiff Alan R. Morris is an individual residing at 113 Bell Street, Point Comfort, Texas 77978.

Plaintiff LouAnn Morris is an individual residing at 113 Bell Street, Point Comfort, Texas 77978.

Plaintiff Henry Carpenter is an individual residing at 211 Wood, Point Comfort, Texas 77978.

Plaintiff Genette Carpenter is an individual residing at 211 Wood, Point Comfort, Texas 77978.

Plaintiff Gerald R. Johnson is an individual residing at 609 W. Ash St. Edna, Texas 77957.

Plaintiff Deloris Johnson is an individual residing at 609 W. Ash St. Edna, Texas 77957.

Plaintiff Phyllis Fox, is an individual residing at 82 Hamilton, Point Comfort, Texas 77978.

Plaintiff Harry Fox is an individual residing at 82 Hamilton, Point Comfort, Texas 77978.

Plaintiff Lucy Fox is an individual residing at 82 Hamilton, Point Comfort, Texas 77978.

Plaintiff Clifford E. Ashton is an individual residing at 115 Jones, Port Lavaca, Texas 77979.

Plaintiff Frieda J. Ashton is an individual residing at 115 Jones, Port Lavaca, Texas 77979.

Plaintiff Richard Dale Stover is an individual residing at 86 Hamilton, Point Comfort, TX 77978.

Plaintiff Jacqueline M. Stover is an individual residing at 86 Hamilton, Point Comfort, TX 77978.

Plaintiff David Willis is an individual residing at 207 Wood, Point Comfort, Texas 77978.

Plaintiff Karen Willis is an individual residing at 207 Wood, Point Comfort, Texas 77978.

Plaintiff Edgar Coker is an individual residing at 117 Texas, Point Comfort, TX 77978.

Plaintiff Priscilla Coker is an individual residing at 117 Texas, Point Comfort, TX 77978.

Plaintiff James E. Wagner is an individual residing at 302 Willowbend, Port Lavaca, TX 77979.

Plaintiff Yvonne Wagner is an individual residing at 302 Willowbend, Port Lavaca, TX 77979.

Plaintiff Nick Faylor is an individual residing at 208 Runnels, Point Comfort, Texas 77978.

Plaintiff Sue Faylor is an individual residing at 208 Runnels, Point Comfort, Texas 77978.

Plaintiff Fred C. Jedlicka is an individual residing at 119 Wood, Point Comfort, TX 77978.

Plaintiff Jane Jedlicka is an individual residing at 119 Wood, Point Comfort, TX 77978.

Plaintiff Charles Loya is an individual residing at 121 Bell, Point Comfort, TX 77978.

Plaintiff Diana G. Loya is an individual residing at 121 Bell, Point Comfort, TX 77978.

Plaintiff Michael R. Martin is an individual residing at 101 Wood, Point Comfort, TX 77978.

Plaintiff Mildred Martin is an individual residing at 101 Wood, Point Comfort, TX 77978.

Plaintiff Steve Reese is an individual residing at 106 Bell, Point Comfort, Texas 77978.

Plaintiff Valerie Reese is an individual residing at 106 Bell, Point Comfort, Texas 77978.

Plaintiff Angeline Gaas is an individual residing at 102 Bell Street, Point Comfort, TX 77978.

Plaintiff Bernard Gaas is an individual residing at 102 Bell Street, Point Comfort, TX 77978.

Plaintiff Emma L. Contreras is an individual residing at 210 Wood, Point Comfort, TX 77978.

Plaintiff Albert E. Maresh is an individual residing at 67 Milan, Point Comfort, Texas 77978.

Plaintiff Edward Bivens is an individual residing at 120 Henderson, Point Comfort, TX 77978.

Plaintiff Tammy Bivens is an individual residing at 120 Henderson, Point Comfort, TX 77978.

Plaintiff Ella W. Bucek-Stanley an individual residing at 68 San Jacinto, Point Comfort, Texas 77978.

Plaintiff Carl G. Sayko is an individual residing at 111 Texas Avenue Point Comfort, TX 77978.

Plaintiff Thomas E. Clark is an individual residing at 107 Paisano Victoria, Texas 77904.

Plaintiff Mary J. Kubena is an individual residing at 217 Henderson St., Point Comfort, TX 77978.

Plaintiff Rosalie B. Lutringer is an individual residing at 212 Henderson, Point Comfort, Texas 77978.

Plaintiff Gloria J. Adams is an individual residing at 123 Bell Street, Point Comfort, Texas 77978.

Plaintiff Clyde Slate is an individual residing at c/o Dick and Jerry Slate, P. O. Box 208, Seadrift, Texas 77983.

Defendant, Formosa Plastics Corporation, Texas is a foreign corporation which is doing business in Texas and may be served with process by serving its registered agent, CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

Defendant, Formosa Plastics Corporation, U. S. A., is a foreign corporation which is doing business in Texas and may be served with process by serving corporate officer Susie Wang at # 9 Peachtree Hill Road, Livingston, N.J. 07039.

Defendant, Formosa Plastics Corporation, America is a foreign corporation which is doing business in Texas and may be served with process by serving its registered agent, CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

Defendant, Formosa Plastics Development Corporation is a foreign corporation which is doing business in Texas and may be served with process by serving its registered agent, CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

Defendant, Nan Ya Plastics Corporation, America is a foreign corporation which is doing business in Texas and may be served with process by serving its registered agent, CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

Defendant, Nan Ya Plastics Corporation, U.S.A. is a foreign corporation which is doing business in Texas and may be served with process by serving its registered agent, CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

Defendant, Formosa Hydrocarbons Company, Inc. is a foreign corporation which is doing business in Texas and may be served with process by serving its registered agent, CT Corporation System at 811 Dallas Avenue, Houston Texas 77002.

Defendant, Formosa Chemicals & Fibre Corporation, America is a foreign corporation which is doing business in Texas and may be served with process by serving its registered agent, CT Corporation System at 350 N. St. Paul Street, Dallas, Texas 75201.

Defendant, Formosa Utility Venture, Ltd. is a domestic corporation which is doing business in Texas and may be served with process by serving its registered agent, Jay Su at 201 Formosa Avenue, Point Comfort, Texas 77978.

Defendant Jay Su is one of the plant managers of Formosa Plastics Corporation, Texas and may be served with process by serving him at 76 Hamilton Street, Point Comfort, Texas 77978.

Defendant, Jack Wu is one of the plant managers of Formosa Plastics Corporation, Texas and may be served with process by serving him at 805 Brookhollow Drive, Port Lavaca, Texas 77979.

II.

Defendant, Formosa Plastics Corporation, Texas is a United States Corporation and is a wholly-owned subsidiary of Formosa Plastics Corporation, U.S.A., which is an international corporation headquartered in Livingston, New Jersey whose principal owners are Susan Wang and Y. C. Wang.

On November 8, 1979, Defendant received Construction Permit No. C-7699 from The Texas Air Control Board, which authorized Defendant to construct a facility processing ethylene dichloride, vinyl chloride

monomer, and polymerized vinyl chloride at 101 Formosa Drive, Point Comfort, Calhoun County, Texas for shipment to plastic fabricators. The plant is located at the northeast corner of the intersection of State Highway 35 and F. M. 1593.

Defendant started the facility in 1982 and the initial facility consisted of the following major processing sections:

Oxyhydrochlorination

Ethylene Dichloride Purification

Ethylene Dichloride Cracking

Vinyl Chloride Monomer Purification

Polyvinyl Chloride Polymerization

Polyvinyl Chloride Finishing

and ancillary services such as steam boilers, process off-gas incineration, multi-section cooling tower, waste water and chemical waste treatment, ethylene dichloride and vinyl chloride monomer unloading and storage, polyvinyl chloride storage, additive compounding and shipping and waste disposal.

The old/existing Formosa polyvinyl chloride (PVC) plant produces powdered PVC resin, which is sold to manufacturers of PVC plastic products. The plant uses two processes to produce ethylene dichloride (EDC), direct chlorination and oxyhydrochlorination. In the direct chlorination process, EDC is produced by reacting gaseous ethylene and chlorine. In the oxyhydrochlorination facility, EDC is produced by reacting ethylene, oxygen and hydrochloric acid (a process by-product).

The ethylene dichloride (some of which is purchased and some made at the plant) once purified, is then cracked into vinyl chloride monomer and hydrogen chloride in ethylene dichloride cracking furnaces. The vinyl chloride monomer portion is then purified and is then polymerized by catalysis in water suspension polymerization reactors. The polyvinyl chloride reactor slurry is blended for uniformity, then centrifuged to remove excess water. The high solids centrifuge discharge is then dried in hot air dryers served by cyclone collectors, screened, and conveyed by pneumatic transfer to storage silos for shipment to plastic fabricators.

Waste waters from the EDC purification process, produced water from the oxyhydrochlorination process, waste water from the VCM process, and waste waters from the PVC process and PVC drying are treated and discharged into Cox Creek, Cox Creek Lake and into Lavaca Bay, contaminating Cox Creek, Cox's Lake, Lavaca Bay and the surrounding environment.

In the late 1980's Formosa began to expand the PVC manufacturing facility to manufacture high-density polyethylene (HDPE), polypropylene (PP), linear low-density polyethylene (LLDPE), ethylene glycol (EG), ethylene dichloride (EDC), and caustic soda a major by-product.

The expansion, located less than one mile from residents and schools of Point Comfort, Texas, dwarfs the town of Point Comfort and is located on 1,600 acres which borders the old/existing PVC plant at F.M. 1593 and Highway 35. The expansion facility supplies gaseous chlorine to that plant. Initial start-up of the expanded facility occurred in August or September of 1993 with completion of all the facilities planned for 1994.

The expansion involved the addition of the following facilities:

- 1) Olefins Plant
- 2) Caustic/Chlorine Plant
- 3) Ethylene Dichloride Plant
- 4) High-Density Polyethylene Plant
- 5) Polypropylene Plant
- 6) Ethylene Glycol Plant
- 7) Linear Low Density Polyethylene Plant
- 8) Utilities Plant
- 9) Combined Waste water Treatment Plant
- 10) Marine Loading Facility, including a Shore Area Tank Farm and a Dock Area Tank Farm
- 11) Ancillary services such as a multitude of pipelines which supply natural gas, brine, ethane, propane and fresh water supplied from Lake Texana, a system which allows ocean going tankers and barges to

supply "light Hydrocarbons" such as butane, raw condensate and ethylene glycol and ethylene dichloride, an extensive railroad and railcar storage system, an electrical generation and steam generation plant which uses natural gas and gases from the manufacturing process, and a marine loading facility which handles incoming and outgoing bulk liquid shipments are connected to the expansion facility project, to the CCND loading/offloading facilities, and to each other by a series of permanent pipelines.

Formosa, by its operation, has discharged and is discharging toxins and poisons into the air, water and soil. Defendants knew or should have known of the dangers to humans, marine life, plants and animals of exposure to and ingestion of these toxins and poisons and the availability of products and/or processes which could prevent the discharge, but willfully and knowingly failed or refused to prevent such discharge.

Plaintiffs allege that the toxins and poisons include, but are not limited to the following:

- vinyl chloride monomer
- ethylene dichloride
- hydrochloric acid
- chlorine
- carbon tetrachloride
- ethylene glycol
- ethyl chloride
- PVC dust and/or powder
- copper
- lead
- increased amount of inhalable particulate matter (PM₁₀)
- increased amount of total suspended particulates
- sulfur dioxide
- nitrogen oxides
- carbon monoxide
- volatile organic compounds
- benzene
- hexane
- toluene
- xylene
- ethyl benzene
- propanol
- styrene
- isoprene
- pentene
- butene
- octane

ethylene
butadiene
propylene oxide
heptane
ethylene oxide
propane
zinc
chromium
oil and grease
chloroethane
methylene chloride
chloroform
1,1 - dichloroethylene
1,1 - dichloroethane
Trans - 1,2 - dichloroethylene
Cis - 1,2 - dichloroethylene
1,1,2 - trichloroethane
trichloroethylene
tetrachloroethylene
chlorobenzene
sodium hydroxide
dioxins
furans
products of incomplete combustion (PICs)

As early as 1975, the U.S. EPA recognized Vinyl Chloride Monomer as one of the most hazardous of air pollutants (see 40 CFR 61.01(a)). Additionally, the U. S. EPA has recognized that serious adverse health effects, including cancer, can result from ambient air exposure to Carbon Tetrachloride, Copper, Ethylene Dichloride, Ethylene Oxide, Toulene and Trichloroethylene. (See 40 CFR 61.01(a)).

Vinyl Chloride Monomer (VCM), Chemical Abstract Service (CAS) #75-01-4, is a hazardous substance as defined at CERCLA 101(14), U.S.C. § 9601(14). The reportable quantity (RQ) for VCM is 1 pound, as set forth in 40 C.F.R. 302, Table 302.4.

Ethylene Dichloride (EDC), CAS #107-06-2, is a hazardous substance as defined at CERCLA 101(14), 42 U.S.C. § 9601(14). The reportable quantity (RQ) for EDC is 100 pounds, as set forth in 40 C.F.R. 302, Table 302.4.

Hydrochloric Acid (HCL), CAS #7674-01-0, is a hazardous substance as defined at CERCLA 101(14), 42 U.S.C. § 9601(14). The RQ for HCL is 5000 pounds, as set forth in 40 C.F.R. 302, Table 302.4.

Chlorine, CAS #7782-50-5, is a hazardous substance as defined at CERCLA 101(14), 42 U.S.C. § 9601(14). The RQ for Chlorine is 10 pounds, as set forth in 40 C.F.R. 302, Table 302.4.

Carbon Tetrachloride, CAS #56-23-5, is a hazardous substance as defined at CERCLA 101(14), 42 U.S.C. § 9601(14). The RQ for Carbon Tetrachloride is 10 pounds, as set forth in 40 C.F.R. 302, Table 302.4.

Since beginning operations in 1982, Defendants have repeatedly violated state and federal environmental laws which seek to control the type and amount of poisons and toxins discharged into the air and water.

Defendants have exceeded the amount of emissions and of discharge permitted; failed to report discharges, upsets and releases; failed to properly document, measure, monitor and report releases and emissions; and failed to properly and adequately warn and notify the Plaintiffs who live, work and/or own property in close proximity to the plant of the releases and emissions.

The known or reported accidents, releases, emissions, upsets, reporting, measuring, modeling, and monitoring failures which have occurred demonstrate a course of conduct and a long pattern of unpermitted discharges and violations which demonstrate a disrespect for laws, and for public health and safety and for the the environment. The unpermitted discharges and other discharges demonstrate an unwillingness on the part of the Defendants to act as a reasonably prudent plastic manufacturer.

Defendants have failed and fail to use proper material in the construction and operation of the facility and have failed to properly, safely and adequately construct, maintain, and operate the facility. This failure, together with the nature of the chemicals used and produced at the plant threaten and endangers the Plaintiffs, and devalues their properties and has resulted in damages to the Plaintiff's environment and neighborhood, including the November 1, 1993 closing of the Upper Lavaca Bay by the Texas Department of Health due to Defendants' wastewater discharge into Lavaca Bay. This discharge, together with other discharges and emissions, adversely affects the environment in which Plaintiffs live and work and affects property values.

III.

FIRST CAUSE OF ACTION - NUISANCE

The Plaintiffs hereby adopt and reallege each and every paragraph of the Statement of Facts applicable to all counts as if fully set forth herein.

At all material times to this cause of action, Defendants have owned, controlled, maintained and operated one of the largest plastics manufacturing facilities in the United States at a location only a short distance from the Plaintiffs' homes and residential neighborhood. This plastic manufacturing facility is under the exclusive control of the Defendants.

Plaintiffs have discovered that the plastics manufacturing facility was and is operating and producing obnoxious vapors, fumes, dust, smoke and obnoxious odors which spread across and invaded the property and buildings and collect on the property of Plaintiffs. Plaintiffs further allege that when the Defendants' facility was and is in operation, there are frequent explosions and powerful rumblings which shake the ground of Plaintiffs' property and rattle windows of Plaintiffs' homes, for which the community receives no warning and little or no explanation from the Defendants as to the cause or nature of the explosions or rumblings.

Frequently, at all hours of the day or night, Plaintiffs can smell and have smelled odors, vapors, fumes, and substances which emanate from the Defendants' operations, frightening and annoying Plaintiffs and disturbing their sleep.

Frequently, at all hours of the day and night, Plaintiffs can hear and have heard while in their homes on their property, in the schools or public places, sirens, alarms, loud speakers, and other frightening annoying and unexplained loud noises emanating from the Plant. The noises frequently disturb Plaintiffs' sleep.

Plaintiffs additionally allege that frequently they see black smoke, fumes, dust, caustic substances, flares and explosions indicating incomplete combustion (which sometimes burn black) from the plant which spread across and invade the property and buildings, collect on the property of Plaintiffs, frightening and annoying Plaintiffs.

Further, public roadways have been closed to Plaintiffs' travel limiting access to Plaintiffs' properties

and children as a result of toxic, poisonous releases at the plant.

The conditions being generated by and originating from the Defendants' plastic manufacturing plant have become so offensive as to make the premises unfit for continuous habitation, and have created a level of noise, air pollution, and road safety hazard that would be detrimental to the residential and rural-residential nature of the neighborhood and to the well-being of the Plaintiffs and their families.

Additionally, the property has been diminished in value and damaged as herein set out. Plaintiffs further allege that the land and premises of the Plaintiffs are no longer a desirable place to live. The conditions created by Defendants' operation of the plastic manufacturing plant constitute a nuisance and have substantially and materially interfered with the use and enjoyment of Plaintiffs' property by Plaintiffs.

The Defendants' manner of use of their property creates and created a nuisance interfering with the use and enjoyment of Plaintiff's property by Defendants, was and is an abnormal use, and is out of place and unreasonable considering the close proximity of Defendants' property to the surrounding residential property. Defendants stand liable in damages to Plaintiffs, without the necessity of proof of negligence for such nuisance created by Defendants' and such use is an unreasonable use of Plaintiffs' property.

IV.

SECOND CAUSE OF ACTION - NEGLIGENCE

The Plaintiffs hereby adopt and reallege each and every paragraph of the Statement of Facts applicable to all counts as if fully set forth herein.

Plaintiffs would show that the release of these toxins into the air and water constitute negligence and said negligence is a proximate cause of Plaintiffs' damages herein described.

Defendants, at all times material hereto, have held themselves out to the public as having knowledge and skills particular to the business of owning and operating a plastics manufacturing facility in a reasonable manner so as not to pose a threat to the well-being of the Plaintiffs and to the environment. They have violated the duty owed to the Plaintiffs to exercise that degree of care and diligence that should be experienced by a reasonable and prudent owner and operator of a plastics manufacturing facility and were negligent in one or

more of the following:

- (1) Emitting caustic explosive, corrosive, carcinogenic, teratogenic, mutagenic, hazardous pollutants and poisons and toxins into the ambient atmosphere, fouling streams, water sources, and water systems causing the accumulation of poisons and toxins in and upon the surrounding land, contaminating the earth, soil, water and air.
- 2) Failing to adequately test the effluent and emissions for toxins and poisons;
- 3) Failing to adequately treat and filter the effluent and emissions to remove toxins and poisons;
- 4) Failing to use alternate production, construction, operation, safety and maintenance techniques which would reduce effluent discharge and air emissions of toxins and poisons;
- 5) Failing to fully disclose to the proper governmental agencies that poisons and toxins were being emitted and discharged in quantities potentially harmful to humans and to the environment;
- 6) Failing to disclose to the public the exact amount, extent and nature of the toxins and poisons discharged into the environment and failing to provide the plaintiffs with an opportunity to protect themselves and to take precautionary protective measures;
- 7) Failing to adequately warn and protect the public immediately upon the release into the environment of toxins and poisons from the plant, related facilities and equipment.

Each and every one of the foregoing acts and omissions, taken separately and collectively, constitutes a direct and proximate cause of the damages sustained by Plaintiffs.

V.

THIRD CAUSE OF ACTION - GROSS NEGLIGENCE

The Plaintiffs hereby adopt and reallege each and every paragraph of the Statement of Facts applicable to all counts as fully set forth herein.

The conduct set forth herein was committed in a willful, wanton and reckless manner. Specifically, the Defendants released poisons and toxins knowing that the poisons and toxins would contaminate the environment causing damage to Plaintiffs herein. Defendants have known of the harm of the toxins and poisons they have

released but have continued their course of unconscionable conduct of emitting and discharging these harmful toxins and poisons into the environment.

Additionally, Defendants have discharged these toxins and poisons in a surreptitious manner and have attempted to hide or disguise the nature, type and extent of the poisons and toxins released into the environment by emitting at night, on weekends, on holidays or at times when state and governmental agencies and citizens might not be able to see, detect or catch the release. Defendants have reduced the emissions or shut down problem units when conducting emission and discharge tests and have stopped or reduced or altered emissions and discharges when observed. In these and other secretive ways, in hopes of not being discovered, Defendants have willfully violated state and federal laws and have knowingly released into the environment and subjected the Plaintiffs to harmful, dangerous toxins and poisons.

VI.

FOURTH CAUSE OF ACTION - STRICT LIABILITY

The Plaintiffs hereby adopt and reallege each and every paragraph of the Statement of Facts applicable to all counts as fully set forth herein.

In the alternative, the Plaintiffs would show that the practice by the Defendants of releasing toxins and poisons into the public air and public waters constitutes an ultra-hazardous activity and said Defendants are liable to Plaintiffs in strict liability. Plaintiffs would show that the activity of the Defendants is abnormally dangerous in that there exists:

- 1) a high degree of risk or harm due to the emissions and discharges of known hazardous materials and known carcinogenic, teratogenic and mutagenic substances;
- 2) a likelihood that the harm that results will be great;
- 3) an unwillingness by the Defendants to eliminate the risk by the exercise of reasonable care;
- 4) facts which indicate the inappropriateness of the activity in the public waters and airs of the United States of America;
- 5) a value of the community that far outweighs the dangerous characteristics of the activity.

VII.

DAMAGES

As a proximate result of the actions of the Defendants, the Plaintiffs have sustained actual damages, inter alia, for which they seek recovery against these Defendants in the following ways:

- 1) mental anguish, past and future;
- 2) medical monitoring and future care and treatment;
- 3) loss of use and enjoyment of property;
- 4) diminution in the fair market value of their property;
- 5) lost profits in the past and future;
- 6) loss of business opportunities;
- 7) pre-judgment and post-judgment interest.

These damages are within the jurisdictional requirements of this Court.

Upon the trial of this case, Plaintiffs will respectfully request this Honorable Court and jury to determine the amount of the loss to the plaintiffs that has occurred in the past and will occur in the future. Further, the Plaintiffs claim punitive damages against all parties causing said damages, due to the gross negligence and reckless, willful and wanton conduct of the Defendants named herein.

VIII.

JURY DEMAND

On behalf of the Plaintiffs in the above-entitled and numbered cause, Plaintiffs hereby make application and demand for a jury trial of such case.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs pray that upon final trial hereof they recover all damages, and penalties, together with costs of court, pre-judgment and post judgment interest, and for such other and further relief, general and special, legal and equitable, as they may show themselves entitled.

Respectfully submitted,

NIEWALD, WALDECK & BROWN

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